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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)
)
Broadcast Signal Carriage Issues)

MM Docket No.92-259

REPLY COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its domestic telephone operating companies and GTE Laboratories Incorporated, offers this reply to the comments of others in the above-captioned proceeding.

In its Comments of January 4, 1993, GTE acknowledged the need to relate the statutory definition of "multichannel video programming distributor" ("MVPD") to several types of common carriage, including "video dialtone" operation by local exchange telephone carriers ("LECs").¹

GTE agrees with NYNEX and USTA that a video dialtone LEC ordinarily would not make multiple channels of video programming available for purchase, 47 U.S.C. § 522(12), and should not be considered an MVPD. The Motion Picture Association of America ("MPAA") reaches essentially the same conclusion (page 5, n.5), absent the LEC's "editorial control over programming offerings . . . such as selecting which broadcast stations will be carried on the system."

¹ Page 2. Initial video dialtone rules were adopted in *Second Report and Order*, CC Docket 87-266, 7 FCC Rcd 5781 (1992). While the Commission did not explicitly seek comment on the application of the MVPD definition to common carriers in the Notice of Proposed Rule Making ("NPRM") here, it did so in the later-issued cable rates NPRM, MM Docket 92-266, FCC 92-544, released December 24, 1992, at ¶9.

In its Comments at 4, GTE posited a circumstance which should place a reasonable qualification on this MPAA view. That is, if a broadcast station dissatisfied with -- or unable to obtain -- carriage by a cable system or other MVPD were to seek transport directly from a LEC, the telephone carrier's affirmative response would neither make it an MVPD nor otherwise violate the law. The station, not the LEC, would be engaged in editorial selection.

In such a case, retransmission consent by the station would be assumed. If the LEC's relationship to viewers of the station's signal went no further than permitted under the video dialtone rules, that interaction should be deemed acceptable. The consent function assigned to the MVPD would be subsumed in the broadcaster-programmer.²

While not expressly called for by the terms of the 1992 Cable Act, GTE respectfully invites the FCC to consider also the novel question of the video programmer or distributor using but a single channel or portion of a channel to bring a broadcast retransmission service to viewers. This is a situation expected by the Commission under video dialtone,³ and clarification of retransmission consent obligations would be helpful.

GTE would be inclined to answer the question the same way, regardless of whether the programmer has rented one channel or many. That is, if the video dialtone LEC is not engaged in making available for purchase by subscribers an

² GTE generally agrees with the chain-of-distribution analysis and recommendations proffered by DirecTV and PrimeTime 24 in response to the NPRM's ¶42.

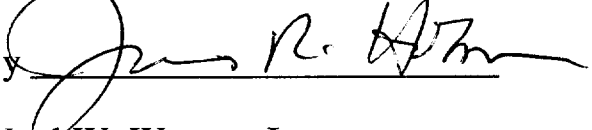
³ *First Report and Order*, CC Docket 87-266, 7 FCC Rcd 300, 327-28 (1991), reconsidered and clarified on other grounds, 7 FCC Rcd 5069 (1992).

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offering consisting of broadcast retransmissions, the LEC should not be assigned a retransmission consent obligation.

Respectfully submitted,

GTE SERVICE CORPORATION

By 

Ward W. Wueste, Jr.
Marceil Morrell
E3J43, GTE Telephone Operations
P.O. Box 152092
Irving, Texas 75015-2092
(214) 718-6314

James R. Hobson
Jeffrey O. Moreno
1275 K Street N.W., Suite 850
Washington, D.C. 20005-4078
(202) 371-9500

January 19, 1993

ITS ATTORNEYS

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on this 19th day of January, 1993 to all parties on the attached list.



Ann D. Berkowitz

Dan J. Alpert
Attorney
Moran Communications, Inc.
1250 Connecticut Avenue, NW
Suite 700
Washington, DC 20036

Eleanor S. Applewhaite
General Counsel
Educational Broadcasting Corporation
356 West 58th Street
New York, NY 10019

Henry L. Baumann
Attorney
National Association of Broadcasters
1771 N Street, N.W.
Washington, DC 20036

Dennis F. Begley
Reddy, Begley, & Martin
2033 M Street, NW
Washington, DC 20036

Craig J. Blakeley
Attorney
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006

Daniel L. Brenner
National Cable Television Assoc., Inc.
1724 Massachusetts Ave., NW
Washington, DC 20036

Karen Brinkmann
Attorney
Latham & Watkins
1001 Pennsylvania Avenue, NW
Suite 1300
Washington, DC 20004

David J. Brugger
President
National Association of
Public Television Stations
1350 Connecticut Ave., N.W.
Washington, DC 20036

Deborah C. Costlow
Attorney
Winston & Strawn
1400 L Street, NW
Suite 700
Washington, DC 20005

Richard Cotton
National Broadcasting Company, Inc.
30 Rockefeller Plaza
New York, NY 10112

John I. Davis
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Joseph E. Dunne, III
Attorney
May & Dunne, Chartered
1000 Thomas Jefferson Street, NW
Suite 520
Washington, DC 20007

Edwin M. Durso
Senior Vice President and General Counsel
ESPN, Inc.
605 Third Avenue
New York, NY 10158-0180

Stephen R. Effros
President
Community Antenna Television Association
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030

Dane E. Erickson
Senior Engineer
Hammett & Edison, Inc.
Consulting Engineers
Box 280068
San Francisco, CA 94128

Paul J. Feldman
Attorney
Fletcher, Heald and Hildreth
1225 Connecticut Avenue, NW
Suite 400
Washington, DC 20036

Stuart F. Feldstein
Attorney
Fleischman and Walsh, P.C.
1400 Sixteenth Street, NW
Washington, DC 20036

James A. Finch
Vice President
Standard Tobacco Company, Inc.
P.O. Box 100
Maysville, KY 41056

Aaron I Fleischman
Attorney
Fleischman and Walsh, P.C.
1400 16th Street, N.W.
Suite 600
Washington, DC 20036

Barbara K. Gardner
Attorney
Leventhal, Senter & Lerman
2000 K Street, NW
Suite 600
Washington, DC 20006

Kristin C. Gerlach
Senior General Attorney
Capital Cities/ABC, Inc.
Law & Regulation
77 West 66th Street
New York, NY 10023

Paul Glist
Attorney
Cole Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

Aruthur B. Goodkind
Attorney
Koteen & Naftalin
1150 Connecticut Avenue, NW
Washington, DC 20036

G. Thomas Hardy
Attorney
Hardy & Ellison, P.C.
9306 Old Keene Mill Road
Suite 100
Burke, VA 22015

Shelley E. Harms
Attorney
NYNEX Telephone Companies
120 Bloomingdale Rd.
White Plains, NY 10605

Philip R. Hochberg
Attorney
Baraff, Koerner, Olender & Hochberg
5335 Wisconsin Avenue, NW
Suite 300
Washington, DC 20015-2003

Katherine A. Hogan
Vice President
Viacom International, Inc.
1515 Broadway
New York, NY 10036

Louis A. Isakoff
General Counsel
International Family Entertainment, Inc.
100 Centerville Turnpike
Virginia Beach, VA 23463

Robert B. Jacobi
Attorney
Cohn and Marks
1333 New Hampshire Avenue, NW
Suite 600
Washington, DC 20036

Mark W. Johnson
Washington Counsel
CBS Inc.
1634 I Street, NW
Washington, DC 20006

Robert L. Johnson
President
Black Entertainment Television
1232 31st Street, W
Washington, DC 20007

Ellen Oran Kaden
CBS, Inc.
52 West 52nd Street
New York, NY 10019

Randolph H. Knight
President
Caribbean Communications Corporation
One Beltjen Place
St. Thomas, VI 00802

Frank W. Lloyd
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo
1825 Eye Street, N.W.
Suite 1200
Washington, DC 20006

W. James MacNaughton
Attorney
Liberty Cable Company
90 Woodbridge Center Drive
Suite 610
Woodbridge, NJ 07095

H. Gwen Marcus
Senior Vice President
Showtime Networks, Inc.
1633 Broadway
New York, NY 10019

Martin T. McCue
Linda Kent
United States Telephone Association
900 19th Street, NW
Suite 800
Washington, DC 20006-2105

John H. Midlen, Jr.
Attorney
Midlen & Guillot, Chartered
3238 Prospect Street, NW
Washington, DC 20007-3214

Herbert D. Miller, Jr.
Attorney
Koteen & Naftalin
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, DC 20036

Howard Monderer
Attorney
National Broadcasting Company, Inc.
1331 Pennsylvania Avenue, N.W.
Suite 930, North Office Tower
Washington, DC 20004

Mark J. Palchick
Attorney
Baraff, Koerner, Olender & Hochberg
5335 Wisconsin Avenue, NW
Suite 300
Washington, DC 20015-2003

James E. Palmer
Chairman
Township of Moorestown
111 W. Second Street
Moorestown, NJ 08057-2480

Molly Pauker
Vice President
Fox Television Stations, Inc.
5151 Wisconsin Avenue, NW
Washington, DC 20016

Andrew R. Paul
Senior Vice President/Government Affairs
Satellite Broadcasting and
Communications Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

Roy F. Perkins
Attorney
Triplett & Associates
1724 Whitewood Lane
Herndon, VA 22070

Suzanne M. Perry
Attorney
Dow, Lohnes & Albertson
1255 23rd Street, N.W. SUITE 500
Washington, DC 20037

Paul S. Pien
Attorney
Akin, Gump, Strauss, Hauer & Feld
1333 New Hampshire Avenue, NW
Suite 400
Washington, DC 20036

James J. Popham
Vice President, General Counsel
Association of Independent
Television Stations, Inc.
1200 18th Street, N.W.
Suite 502
Washington, DC 20036

Grier C. Raclin
Attorney
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900, East Tower
Washington, DC 20005

Robert J. Rini
Attorney
Rini & Coran, P.C.
1350 Connecticut Avenue, NW
Suite 900
Washington, DC 20036

Henry M. Rivera
Attorney
Ginsburg, Feldman & Bress Chartered
1250 Connecticut Avenue, NW
Washington, DC 20036

Stephen R. Ross
Ross & Hardies
888 16th Street, NW
Suite 300
Washington, DC 20006

Robert J. Sachs
Senior Vice President
Continental Cablevision, Inc.
Pilot House, Lewis Wharf
Boston, MA 02110

Sol Schildhouse
Attorney
Farrow, Schildhouse & Wilson
1400 16th Street, N.W.
Suite 501
Washington, DC 20036

Gregory M. Schmidt
Attorney
Covington & Burling

Dorothy Schrader
General Counsel
United States Copyright Office

Frances Seghers
Executive Director, Federal Affairs
Motion Picture Assn. of America, Inc.
1600 Eye Street, N.W.
Washington, DC 20006

Charles J. Sennet
Tribune Broadcasting Company
435 North Michigan Avenue
Chicago, IL 60611

George H. Shapiro
Attorney
Arent, Fox, Kinter, Plotkin & Kahn
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

Julian L. Shepard
Vice President
Association for Maximum Service
Television, Inc.
1400 16th Street, NW
Suite 610
Washington, DC 20036

Robert M. Silber
Corporate Attorney
National Captioning Institute, Inc.
5203 Leesburg Pike
15th Floor
Falls Church, VA 22041

Paul J. Sinderbrand
Attorney
Keck, Mahin & Cate
1201 New York Ave., N.W.
Penthouse
Washington, DC 20005-3919

Norman M. Sinel
Attorney
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

Bruce D. Sokler
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004-2608

Henry A. Solomon
Attorney
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, VA 22203-1633

Bradley C. Stillman
Consumer Federation of America
1424 16th Street, NW
Washington, DC 20036

Stephanie Storms
Vice President
Viacom Cable
P.O. Box 13
Pleasanton, CA 94566-0811

Cary S. Tepper
Attorney
Meyer, Faller, Weisman & Rosenberg
4400 Jennifer Street, NW
Suite 380
Washington, DC 20015

Jeff Treeman
United Video, Inc.
3801 S. Sheridan Road
Tulsa, OK 74145

David E. Tripp
Vice President and General Counsel
Spectradyn, Inc.
1501 North Plano Road
Richardson, TX 75081

Allan A. Tuttle
Attorney
Patton, Boggs & Blow
2550 M Street, NW
Washington, DC 20037

Philip L. Verveer
Attorney
Willkie, Farr & Gallagher
3 Lafayette Center
1155 21st Street, N.W., Suite 600
Washington, DC 20036

Charles S. Walsh
Attorney
Fleischmann and Walsh, P.C.
1400 Sixteenth, N.W.
Suite 600
Washington, DC 20036

Joseph W. Waz, Jr.
General Counsel
The Wexler Group
1317 F Street, N.W.
Suite 600
Washington, DC 20004

Barry D. Wood
Attorney
Jones, Waldo, Holbrook & McDonough
2300 M Street, NW
Suite 900
Washington, DC 20037

Randy Wright
General Manager
Agape Church, Inc.
P.O. Box 22007
Little Rock, AK 72221-2007